

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

TODD A. KING,

Petitioner,

Case No. 3:22-cv-184

vs.

STATE OF OHIO,

Respondent.

District Judge Michael J. Newman  
Magistrate Judge Caroline H. Gentry

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**ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (DOC. NO. 3); (2) DENYING AS MOOT PETITIONER'S MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* (DOC. NO. 1); (3) DISMISSING THIS CASE WITHOUT PREJUDICE AND TERMINATING IT ON THE DOCKET; AND (4) CLARIFYING THAT PETITIONER'S EARLIER FILED HABEAS PETITION REMAINS PENDING ON THE DOCKET**

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This case is before the Court on the Report and Recommendation issued by United States Magistrate Judge Caroline H. Gentry, to whom this case was referred under 28 U.S.C. § 636(b). Doc. No. 3. *Pro se* Petitioner has filed two petitions for a writ of *habeas corpus*, 28 U.S.C. § 2254, challenging the same 2020 conviction in the Montgomery County, Ohio Court of Common Pleas. Doc. No. 1; *see also King v. Warden*, No. 3:22-cv-154 (S.D. Ohio June 9, 2022). Both petitions seek relief on the same grounds. *Compare* Doc. No. 1-1, *with* Doc. No. 1, No. 3:22-cv-154. Judge Gentry recommended that Petitioner's successive petition filed here (in Case No. 3:22-cv-184) be dismissed without prejudice to prosecution of his first-filed petition (*i.e.*, Case No. 3:22-cv-154) and that his motion for leave to proceed *in forma pauperis* in the successive petition be denied as moot. Doc. No. 3 at PageID 33.

Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation should be adopted. Accordingly, it is hereby **ORDERED** that: (1) the

Report and Recommendation in Case No. 3:22-cv-184 is **ADOPTED** in full (Doc. No. 3); (2) Petitioner's petition for leave to proceed *in forma pauperis* in this case is **DENIED AS MOOT**; (3) this case is **DISMISSED WITHOUT PREJUDICE** to Petitioner's prosecution of his petition filed in 3:22-cv-154 and **TERMINATED** on the docket; and (4) the Court clarifies that Petitioner's earlier filed habeas petition (in Case No. 3:22-cv-154) remains pending on the docket.<sup>1</sup>

**IT IS SO ORDERED.**

Date: September 1, 2022

s/Michael J. Newman

Hon. Michael J. Newman  
United States District Judge

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<sup>1</sup> Pursuant to 28 U.S.C. § 1915(a)(3), the Court hereby **CERTIFIES** to the United States Court of Appeals for the Sixth Circuit that an appeal by Plaintiff would be frivolous and not taken in good faith. Consequently, Plaintiff should not be permitted to proceed in forma pauperis on appeal, and the Court **DENIES** Plaintiff a certificate of appealability.